

OFFICE OF STATE PURCHASING

Master Installment Purchase Agreement (MIPA)



January 26, 2005

MASTER INSTALLMENT PURCHASE AGREEMENT (MIPA)

A third-party financed program established to provide state agencies the means to acquire larger equipment on an installment purchase basis. The equipment, which may be financed, includes those items which historically have been rented or leased and those equipment items historically placed in the bond portion of the Capital Outlay bill.

The eligible program participants are all budgeted state agencies contained within the General Appropriation and Ancillary Appropriations Acts; however, those state agencies not having existing financing mechanisms will be given first priority. Requests are handled on a first come first serve basis.

Further information about the MIPA program may be obtained by calling (225) 342-8053.

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AGENCY SUPPLEMENTAL AGREEMENT (AGREEMENT)

I. PURPOSE

The MIPA's purpose is to establish a mechanism to continue to provide state agencies the means to acquire equipment on an installment purchase basis. The equipment includes those items, which historically have been rented or leased, and those equipment items historically placed in the bond portion of the Capital Outlay Bill.

II. DEFINITIONS

- A. **Master Installment Purchase Agreement (MIPA)**: An agreement entered into by the State of Louisiana and the Finance Vendor to establish installment purchase financing.
- B. **Agency Supplemental Agreement**: Agreement signed by the Using Agency acknowledging the details of the MIPA's parameters and payment requirements.
- C. **Default**: Failure of Using Agency to pay debt requirements of program participation.
- D. **Property**: Means that property set out in the equipment schedule executed pursuant to and during the term of the MIPA between Finance Vendor and Using Agency.
- E. **MIPA Program Administrator (Administrator)**: Designee of Commissioner of Administration responsible for management of the MIPA.
- F. **Office of State Purchasing (OSP)**: Unit of the Division of Administration responsible for evaluation and procurement functions of the MIPA.
- G. **Finance Vendor**: Vendor responsible for financing activities of the MIPA.
- H. **Using Agency**: Means that budget agency set out in the Agreement which will use the property being purchased.
- I. **Certificate of Acceptance**: Document completed by Using Agency acknowledging delivery and acceptance of goods or services. Forms the basis of:
 - 1) payment by Finance Vendor for payment to equipment vendor, and
 - 2) the basis for establishment of debt servicing schedules.

- J. **Amortization Schedule:** Repayment schedule generated by Finance Vendor based upon receipt of completed Certificate of Acceptance, which forms basis for payment requirement to Finance Vendor by the Using Agency.
- K. **Equipment and Payment Schedule:** Detail listing of equipment requested to be financed through the MIPA for each takedown.

III. **PROGRAM PARAMETER**

- A. **Program Issuance Capacity** - The program issuance capacity is for \$20,000,000/12 months with options to renew it for two additional contract terms, each of which will be for an amount of \$20,000,000 or 12 months, whichever comes first.
- B. **Program Financing Entity** - Banc of America Leasing & Capital, LLC
- C. **Eligible Program Participants** - All budgeted state agencies contained within the General Appropriation and Ancillary Appropriation Acts of 1990; however, those state entities not having existing financing mechanisms will be given first priority. Requests handled on first come first serve basis.
- D. **Eligible Property** -
 - (1) Hard acquisition cost: (100%) computer hardware, copier, electronic, medical diagnostic equipment, heavy duty equipment, vehicles, and telecommunications equipment, others subject to approval.
 - (2) Soft acquisition cost: cabling, operating software, etc. (eligibility restricted to 35% of hard acquisition costs).
- E. **Program Responsibilities** -
 - Using Agency - Request initiation/documentation preparation/
substantiation of need/debt payment,
 - Office of State Purchasing - Submission review and evaluation/
bidding or procurement,
 - Finance Vendor - Review of credit decision, amortization
schedule preparation, billing, collection and reporting.
- F. **Basis of Evaluation** - Demonstrated need for equipment meeting eligible property criteria, and certification of funding availability by State Budget Office and agency personnel.
- G. **Program Administrator** - All decisions regarding Using Agency submissions reside with the Administrator so delineated in II E of this document.

H. **Rejection of Using Agency Participation Request** - The Finance Vendor reserves the right to reject any or all requests in whole or in part.

I. **Submission of Using Agency Participation Request** - An original and copy of the entire agency request must be delivered to: (Address for all other forms of delivery)

Office of State Purchasing
Claiborne Building – 2nd Floor
1201 North 3rd Street
Post Office Box 94095
Baton Rouge, Louisiana 70804-9095

J. **Contact Personnel** - Inquiries regarding submissions or pending requests should be addressed to:

Jimmie Sanders
Office of State Purchasing
(225) 342-8053 or Fax (225) 342-8688

Inquiries regarding payments, billings, etc., should be addressed to:

Ms. Laura Pritchett
Banc of America Leasing & Capital, LLC
2059 Northlake Parkway, 4th Floor South
Tucker, GA 30084
(770) 270-8448 or Fax (770) 270-8454

K. **Inquiries** - Inquiries are encouraged, but the Finance Vendor will be bound only by written correspondence of the Program Administrator.

L. **Execution of Agency Supplemental Agreement (Agreement)** - All participants shall execute an agreement in order to be eligible for participation, which must be signed by the Department Undersecretary and the Agency Head. Subsequent submissions under the MIPA will not require an additional agreement to be submitted. We will keep your original agreement on file.

IV. CONTRACTUAL TERMS AND CONDITIONS

A. **Installment Purchase Procedure** - The equipment and purchase price of the equipment will be selected through the appropriate bidding procedure under Louisiana law.

B. **Interest Rate Determination** - The State will set the current APR on the effective date of the contract based on the date the equipment is financed.

The Current Treasury Index for each financing term shall be the average of the averages of the closing yield of the corresponding Treasury Notes listed in the Wall Street Journal. The Wall Street Journal shall be the source of the data for the term of the contract.

The Current APR and the current Treasury Index will be carried 2 decimal places.

The Current APR for each financing term shall be derived by multiplying the Current Treasury Index by the percentage of the Current Treasury Index for each financing term.

For this issuance, the percentage of Treasury will be as follows:

36 month – 95.0%
60 month – 95.5%
84 month – 95.0%

Example: To set the current APR for a 36-month term for October 30, 1990:

Current Treasury Index = 7.96 Percentage of Treasury = 82.29
Current APR = Current Treasury Index X Percentage of Treasury
Current APR = 7.96 X 82.29% = 6.55%.

The Current APR for a 36-month term would be 6.55% for this example.

NOTE: The Current APR will increase or decrease in accordance with the change in the Current Treasury Index.

If, in the group of Treasury Notes to be used in calculating the Current Treasury Index, there appears a note with a yield that is 1.00 or more lower than the highest yield in the group, then the note that is 1.00 or more lower than the highest yield in the group will not be used in calculating the Current Treasury Index, except in the case where the highest yield in the group is the deviation rather than the trend. In the case where the highest yield in the group is the deviation rather than the trend, the highest yield will not be used in calculating the Current Treasury Index.

If the data for a particular note does not appear on the day the Current APR is set then the note(s) immediately preceding will be averaged and the note(s) immediately succeeding will be averaged. The average of these averages will be substituted for the average of the closing yield of the note that does not appear.

If the State selects a payment method other than monthly the following basis points would be added to the interest rate:

Quarterly - 2
Semi-Annually - 5
Annually - 12

For Example:

If the Current APR is to be set on March 1, 1989, no data appears in the Wall Street Journal for a five (5) year Treasury Note maturing March, 1994. The note(s) immediately preceding March, 1994, is two (2) for February, 1994, with an average yield of 9.325%. The note(s) immediately succeeding March, 1994, is April, 1994, with a yield of 9.45%. The average of these two is 9.388% which would be used as the index for a 60-month term.

If there is no data for treasury notes in the Wall Street Journal on the day the Current APR is set, then the Current APR will be set on the first day in which the data appears.

If the day upon which the Current APR is due to be set is a Saturday, Sunday or a State holiday, then it will be set on the first business day following.

- C. Detailed Procedure:** To initiate participation, the Using Agency must submit the following to: (U.S. Mail delivery Address)

State of Louisiana
Division of Administration
Office of State Purchasing
Post Office Box 94095
Baton Rouge, Louisiana 70804-9095

- 1) A purchase/release order made out to the equipment vendor or a requisition for equipment to be bid. The order will state delivery and invoice to the Using Agency, but the body of the request shall contain the language:

"This order is to be paid for on behalf of the State of Louisiana by the Louisiana Master Installment Purchase Agreement.@

The accounting field for the purchase orders will be issued as non-encumbered.

- 2) A completed Certificate of Equipment Use.
- 3) An original and one copy of the Agency Supplemental Agreement

signed by the Undersecretary of the Department and the Agency Head. After the Undersecretary's signature is obtained on the first transaction, only other executed required documents, signed by the Agency Head, are required for subsequent transactions.

- 4) An original and one copy of the Equipment and Payment Schedule signed by the Undersecretary or the head of the Using Agency.

Upon receipt of the above, the workflow detailed in Exhibit 1 will be utilized to request processing.

- 5) Upon satisfactory receipt of the equipment and invoice, the Using Agency shall execute a Certificate of Acceptance and forward the Certificate and original invoice to State Purchasing.

The agency is responsible for verifying that all information of description and prices are exactly as stated on the purchase order. Note that no invoice can be processed further until information is correct.

Also note it is imperative that Certificate of Acceptance and Invoices be submitted **as soon as possible** in order to pay equipment vendors timely.

- 6) At that time the Agency shall also forward a UCC1-form, a 8038G (if over \$100,000) or 8038GC (if under \$100,000) IRS form, and a Notice and Acknowledgement Assignment.
- 7) State Purchasing shall send the Finance Vendor notice to pay the equipment vendor upon receipt of the items as listed in numbers 5, and 6 above.
- 8) The Finance Vendor will review the documentation to confirm receipt of a complete package. The interest rate for the transaction will be determined on the funding date in accordance with the bid formula. The amortization schedule will be faxed to the State for confirmation prior to funding. Upon receipt of all original signed documentation, the Finance Vendor will fund the transaction within fifteen (15) business days.
- 9) The Finance Vendor will send countersigned copies of all documentation, amortization schedule, and proof of payment to the State.
- 10) The State will then issue a finance purchase order with a signed amortization schedule. The first payment will be due thirty (30) days from the date the Finance Vendor funded the takedown.

11) The Finance Vendor will invoice the agency accordingly, but the agency is obligated to pay regardless of invoicing.

D. Title of Acquired Property - Title and ownership of the property and the right to use of software shall vest in the Agency upon acceptance of the property by the using agency.

E. Minimum Purchase Levels - The minimum individual total transaction amount is \$100,000; however, Banc of America Leasing & Capital, LLC, in its sole discretion, may, but shall not be obligated to finance any amount under \$100,000.

The purpose of this MIPA is to provide financing on major equipment purchases for state agencies. The Finance Vendor and/or Purchasing may at their discretion decline to finance equipment which does not meet the intent of the program.

F. Financing Term Length - Terms of installment purchases under this agreement shall be either thirty-six (36) months, sixty (60) months, or eighty-four (84) months. Eighty-four months are reserved for qualified telecommunications equipment only. The term of financing shall not exceed the economic life of the item or items being procured.

G. Non Progress Payment - The Finance Vendor shall invoice the using agency for the payment in accordance with the amortization schedule. Payments will be scheduled monthly in arrears. Prepayment of the entire amount at any time may be made by the Agency. Buyout quotes can be obtained from Gail Smedal, Banc of America Leasing & Capital, LLC at (415) 765-7390.

H. Progress Payments - It may be expected that in certain projects, primarily telecommunication projects, the State will provide progress payments to suppliers of goods or services. No more than three progress payments would be involved in any particular project prior to the acceptance of said project. Furthermore, the total percentage of a project to be involved in progress payments will not exceed 60 percent of that project's budgeted cost.

I. Payment for Equipment as Received - Under special circumstances, the Finance Vendor may pay for equipment as it is received. The procedure will be identical to an individual takedown.

J. Appropriation Dependency - The continuation of this contract is contingent upon the continuation of an appropriation of funds by the Legislature to fulfill the requirements of the contract.

K. Default - In the event an agency is placed in default the title and full

ownership of the equipment will revert to the Finance Vendor.

- L. **Late Payment** - Upon the occurrence of two (2) late payments during the financing term, the agency will be required to appear before the Program Administrator to explain its failure to make timely payments to the program.
- M. **Elimination from Participation** - The Program Administrator may eliminate agencies from participation for:
 - 1) an agency in default of its obligations under an individual transaction,
 - 2) a pattern of delinquent payments,
 - 3) failure to maintain equipment,
 - 4) failure to maintain adequate insurance on the property, etc.
- N. **Warranty** - The State shall contract with the equipment vendor for all equipment warranties, whether express or implied. The Finance Vendor shall have no liability to the Using Agency with respect to the performance and condition of the property being purchased.
- O. **Insurance** - The using agency shall maintain adequate property and casualty insurance on the property during the term of this agreement in an amount adequate to protect the Finance Vendor, which amount shall be at least the current balance of the total amount financed. The agency shall obtain such insurance through the insurance administered by the Office of Risk Management.
- P. **Amendments** - This agreement shall only be amended in writing executed by the financing vendor and the Director of State Purchasing.

In witness whereof, the parties appear through their duly qualified representative who affix their signatures hereto as follows:

FOR DEPARTMENT:

DEPARTMENT UNDERSECRETARY

AGENCY HEAD

AGENCY/UNIT

DATE

DATE

Exhibit B to Master Installment
Purchase Agreement

CERTIFICATE OF EQUIPMENT USE

Reference: Requisition Number or Purchase Order Number _____:

TO: Banc of America Leasing & Capital, LLC ("Vendor")

Using Agency Certifications:

1. Using Agency has entered into an Equipment and Payment Schedule ("Schedule"), which by its terms, incorporates the provisions of the Master Installment Purchase Agreement dated as of August 5, 2003 (the "Agreement") between Banc of America Leasing & Capital, LLC, and the State of Louisiana (the "State"). All representations herein are made by the Using Agency with reference to the terms and conditions of the Schedule and Agreement on behalf of the State, and nothing herein shall diminish any rights or benefits of the Using Agency or the State thereunder. The property listed in the Schedule is movable.

2. It is expected that the payments due from the State under the Schedule and the Agreement (the "Payments") will be paid from annual appropriations of the State deposited into its general fund, that such appropriations will equal such Payments due during each payment period, and that all amounts paid by the State for such Payments will be from an appropriation made to the State for the fiscal year during which such payments are made. No other fund or account will be used directly or indirectly to pay such Payments, nor will any other fund or account be pledged as security for the payment of such Payments.

3. The Using Agency will not receive proceeds or other consideration for its payment of such Payments other than the use, possession and ownership of the property pursuant to the terms and conditions of the Schedule and Agreement. It is reasonably expected that the State will not sell, lease or otherwise dispose of the property prior to the termination of the Schedule. The Using Agency Does Not expect there to be any investment of the proceeds other than in connection with the purchase of the movable property listed on the Schedule.

4. No more than five percent (5%) of the use of the property in any given month shall be, directly or indirectly conducted in any activity carried on by a person other than a governmental unit, unless such use is by a member of the general public. The State will not use or permit the use of the property in such a manner or to such extent as would result in the loss of exemption from federal income tax of the interest portion of the Payment.

5. The State agrees to provide such documentation as may be required for the purpose of reporting the Schedule and Agreement under the provisions of the Internal

Revenue Code of 1986, its amendments, restatements or rules and regulations.

6. The State represents that the property acquired under the Schedule is essential to its proper, efficient and economic operations. To that end, the State provides the following responses concerning the property's intended use:

- a. Why was the specific manufacturer-s/vendor-s property selected?
- b. What will be the property-s application?
- c. Why is the property essential to the Using Agency-s operations?
- d. What increased capabilities will the property provide?
- e. What is the estimated useful life of the property to the Using Agency-s operations?
- f. What, if any, existing property will be replaced by the property selected?
What is the age of the replacement property?

- g. Why, if at all, is the existing property being replaced?
- h. If the equipment is not replaced, why is the additional equipment needed?
- i. Contact name and phone number of the agency using the equipment if additional information is required.

7. The Commissioner of Internal Revenue has not published notice that the Using Agency is disqualified and may not certify its obligations under Treasury regulations Section 1.103-13(a)(2), nor has the Using Agency been notified that such action is contemplated.

To the best knowledge and belief of the undersigned, no other facts, estimates or circumstances exist which would materially change the expectations of the Using Agency as set further herein, furthermore, said expectations are reasonable. The undersigned is duly authorized to bind the State and Using Agency in executing this Certificate.

Using Agency

By: _____

Name: _____

Title: _____

Date: _____

EQUIPMENT AND PAYMENT SCHEDULE NO. _____

The terms and conditions set forth in the Master Installment Purchase Agreement dated as of August 5, 2003, between Banc of America Leasing & Capital, LLC (A Vendor@) and the State of Louisiana (the A State@) apply to this transaction and are adopted here by reference as though set forth at length herein.

In connection with this request for the Finance Vendor to provide financing for the requisitions/purchase orders listed below, _____

(using agency)

certifies that it has budget available to pay the current year amortization payment(s) and will do all things lawful within its power to properly request and pursue funds to meet future amortization requirements.

Total Amount Financed and Installment Payments

Description of Property

Location of Property

Purchase Price

Estimated Purchase Price: _____

Total Purchase Price: _____

Less Down Payment: _____

Balance of Purchase Price/Total Amount Financed: _____

Financing Term Requested: _____
(36, 60 or 84 months)

Payments to be Made: _____
(monthly, semi-annually or annually)

Commencement date is the date on which Vendor pays the equipment vendor or deposit funds in an escrow fund for such payment, whichever is earlier.

First periodic payment due _____.

Subsequent periodic payments due _____, thereafter, commencing on _____, as set forth in the Installment Payment Schedule attached hereto as Exhibit A and made a part hereof.

Taxable Rate: _____%

Pay Out Amount: as set forth in Exhibit A hereto.

Annual Percentage Interest Rate Factor _____%.

**Banc of America Leasing
and Capital, LLC**

[USING AGENCY]

By: _____
Authorized Signature

By: _____
Authorized Signature

Title: _____

Title: _____

Date _____

Date: _____

Address: _____

Attention: _____

Phone: () _____

Fax: () _____

Exhibit D to Master Installment

Purchase Agreement

CERTIFICATE OF ACCEPTANCE

TO: BANC OF AMERICA LEASING AND CAPITAL, LLC

**RE: MASTER INSTALLMENT PURCHASE AGREEMENT DATED AUGUST 5, 2003
BETWEEN BANC OF AMERICA LEASING & CAPITAL, LLC AND THE STATE
OF LOUISIANA**

EQUIPMENT AND PAYMENT SCHEDULE NO. _____

In connection with the above-referenced Master Installment Purchase Agreement and Equipment and Payment Schedule, we are pleased to confirm that:

1. All of the equipment described in such Equipment and Payment Schedule has been delivered to and received by the undersigned; that all installation or other work necessary prior to the use thereof has been completed; that said equipment has been examined and/or tested and is in good operating order and condition and is in all respects satisfactory to the undersigned and complies with all terms of the Master Installment Purchase Agreement. You are hereby authorized to pay for the equipment in accordance with the terms of the purchase order for the same, which has already been sent to you.

2. In the future, in the event such equipment fails to perform as expected or represented, the Using Agency and the State will continue to honor the Master Installment Purchase Agreement in all respects and continue to make installment payments and any other payment under the terms of said Master Installment Purchase Agreement. Using Agency and the State will look solely to the seller, distributor, manufacturer, or any other party, other than the financing vendor, for recourse.

3. Using Agency and the State acknowledge that the financing vendor is not the distributor, manufacturer nor seller of the equipment and has no control, knowledge or familiarity with the condition, capacity functioning or other characteristics of the equipment.

4. There will be no abatement or reduction of the Installment Payments made by the State except as expressly provided in the Master Installment Purchase Agreement. It is the intention of the parties that the periodic payments be made in all events unless the obligations to pay such amounts are terminated as provided for the Agreement. The State agrees not to assert against any assignee of the stream of payments any defense, counterclaim, offset or recoupment which the State may now or hereafter have against the Vendor, except for the defense that the agreement has terminated in accordance with provisions thereof.

5. The Using Agency and the State shall maintain adequate property and casualty insurance on the property during the term of the Agreement in an amount adequate to protect Vendor and its assigns, which amount shall be at least the current balance of the total amount financed, or buy out price, set forth in the Equipment and Payment Schedule. The Using Agency and the State may obtain such insurance through its own self-insurance program, by commercial insurance carriers or by a combination thereof.

6. The Using Agency has power and authority to execute and deliver this Certificate of Acceptance on behalf of the State under the Master Installment Purchase Agreement, and this Certificate of Acceptance is a valid and binding obligation of the State.

This certificate supplements, but does not alter, construe or amend the terms of the Master Installment Purchase Agreement between Banc of America Leasing & Capital, LLC Company and the State.

Using Agency

Witness

By: _____

Title: _____

Witness

Date: _____

Description of Equipment

Equipment Serial Number(s)